Cri A 465 96

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

CF0000059423

Division Bench (Criminal)

APPEAL OF PRISONER

No. 3535 Name कुंजलू

Father's name मंगलदेव यादव निवासी ग्राम - रायभूली, थाना - डोंगरगढ़

Residence जिला दुर्ग (म.प्र.) Age 50 वर्ष

Sentenced to आजीवन कारावास On 13.2.1996

Under section 307, 376 (2)(f) भा.दं.वि. by अतिरिक्त प्रथम अपर सत्र न्यायाधीश दुर्ग (म.प्र.)

S.T.No. 30/95

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received 17.2.1996

3 Date on which Appeal sent 26.2.1996

4 Whether the prisoner wishes to be represented or not – Yes / No

No. 3535 Name कुंजलू S/o मंगलदेव यादव

Confined in केन्द्रीय Jail रायपुर (म.प्र.)

No. 199 / जेल / 96 Dated 26/2/96 199 .....

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ अतिरिक्त सत्र न्यायाधीश उत्तर न्यायालय भिलाई/दुर्ग एवं रायपुर

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न :- प्रकरण क्र. 30/95 की प्रमाणित प्रति निर्णय प्रतिलिपि।

Superintendent
Superintendent,
Central Jail, Raipur (M.P.)

Date of receipt in ..... office .....

Date of receipt record to accompany the ..... with Sn Diary

Memo of Appeal to the Appellate court .....

No ..... Dated ..... 199 .....

Forwarded to the .....

Date of receipt in Appellate Court .....

High Court of Madhya Pradesh
JABALPUR
17 MAR 1996
Reg. No. 142
Private Clerk

(P. T. O.)

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१५

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A.465/96 सन् ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

6-3-2006

Mr. Abhijeet Sarkar, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. M.P.S. Bhatia, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

By this appeal under Section 374 (2) of the Cr.P.C., the accused/appellant has questioned legality, propriety and correctness of the judgment of conviction and order of sentence dated 13th February, 1996, passed by the 1st Additional Sessions Judge, Durg, in Sessions Trial No.30/95, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Sections 307 & 376 (2) (f) of the I.P.C., sentenced him to undergo imprisonment for life on both counts.

The case of the prosecution, in brief, is that the prosecutrix namely, Rashmi lodged the First Information Report (Ex.P-14) in Police Station: Supela to the effect that she is a beggar, her father resides in Karnataka, mother is dead and she used to beg on the Railway Station, Bilaspur, there one old beard person met her who was wearing white, red shirt and Lungi. He wanted to keep her with him. She used to call him as Baba. She refused to remain with her and she came to Bhilai. On 28-4-1994 at about 4 a.m. she was sleeping on the ground, Baba came and assaulted her with a sharp edged weapon on her neck with intention to cause her death, as a result of which she received cut injury in her neck. When she reached near Chandra

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक C.A.465/96 सन् ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Mourya talkies, the Police met her and they brought her to the Police Station. The neck injury is giving pain.

Receiving this report, the Police registered offence under Section 307 of the I.P.C. Clothes of the prosecutrix were taken into possession under Ex.P-11 and she was sent for medical examination where she was examined by Dr. Smt. Vandana Gupta (PW-3) regarding rape and the doctor prepared the report (Ex.P-6). She was also examined by Dr. S.A. Khan (PW-4) in respect of the injuries received by her and after examination, the doctor prepared the injury report (Ex.P-7). The frock of the prosecutrix was sent for examination to the doctor and the doctor after examination, prepared the report Ex.P-8. X-ray was taken in order to ascertain the age of the prosecutrix. The investigating Officer prepared the site plan (Ex.P-10). During police custody, knife, the weapon of offence was taken into possession from the possession of the accused. The accused was identified by the prosecutrix before the Naib Tehsildar & Executive Magistrate and the Naib Tehsildar prepared the identification memo (Ex.P-13). The doctor took the vaginal slides and thereafter the slides of the vagina, frock, knife and Lungi of the accused were sent to the Forensic Science Laboratory, Raipur. As per the report of the Laboratory, semen and spermatozoa were not found on slides. However, on the frock of the prosecutrix, semen and spermatozoa were found. Accused Dukalu was examined by Dr. R.B. Agrawal (PW-2) in order to ascertain the potency and he gave the certificate (Ex.P-4). Clothes of the accused were taken into possession under Ex.P-3.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Durg, who in turn committed the case to the Sessions Judge, Durg, from where learned Additional Sessions Judge received the case on transfer for trial.

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मामला क्रमांक G.A. 465/96 सन् ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

The prosecution in order to establish charge against the accused examined 12 witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and he has been falsely implicated in the crime. Learned Additional Sessions Judge, however, convicted and sentenced the accused as mentioned in para 1 of this judgment.

We have heard Mr. Abhijeet Sarkar, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr. M.P.S. Bhatia, learned Panel Lawyer on behalf of the State/respondent. We have perused the record and the judgment of the trial Court.

As far as commission of offence under Section 376 (2) (f) of the I.P.C. is concerned, as per the medical report, at the time of commission of crime the prosecutrix was aged about 9 years. After perusal of the record, we are of the opinion that the prosecution has failed to establish charge against the accused for commission of offence under Section 376 (2) (f) of the I.P.C. for the following reasons: -

1. That, in the First Information Report (Ex.P-14), the prosecutrix had not mentioned anything about commission of rape on her. She has simply stated that the accused assaulted with a sharp edged weapon on her neck in order to commit her murder.
2. That, even on the slides, which were taken from the vaginal part of the prosecutrix, as per the FSL report (Ex.P-15), semen and spermatozoa were not found.
3. That, Dr. Smt. Vandana Gupta (PW-3) who examined the prosecutrix with regard to commission of rape on her has stated that there was no

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मामला क्रमांक G.A. 465/96 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

injury on the external part of the body of the prosecutrix, however hymen was ruptured, on touching, blood was coming out and hymen was in 6 O' clock position and she stitched the hymen. She has not stated as to whether there was any sign of commission of rape.

4. That, the prosecutrix in her evidence as PW-7 has not stated that the accused has committed rape on her. She has simply stated that when she went for sleep, the accused attacked her on neck with a knife as a result of which she became unconscious. Whether anything else was committed on her by the accused or not she does not know. When she regained consciousness, she found that the accused was missing from there. She went near a sawmill and a hotel, after drinking water, she again became unconscious and she does not know who took her to the hospital. In cross-examination, she has stated that she came to know about injury on the neck only after she woke up from the sleep.

Therefore, in the circumstances, there is no positive evidence in order to establish charge of rape against the accused for the reasons mentioned hereinabove. Hence, the finding of the trial Court convicting the accused under Section 376 (2) (f) of the I.P.C. cannot be sustained and the same is liable to be set aside.

As far as commission of offence under Section 307 of the I.P.C. is concerned, Dr. S.A. Khan (PW-4) has examined the prosecutrix in respect of injury on her neck and has stated that there was a cut injury in the size of 12 x 3 x 3 cms. on neck. The injury was on the thyroid cartilage and muscles and tissues were found cut. The doctor has not opined that the injury in question was grievous in nature. Dr. M.C. Mahnot (PW-8) has stated in his

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मामला क्रमांक G.A. 465/96 सन् ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

~~evidence that he stitched the neck wound. But, there is no evidence to~~ show that any grievous injury was on the neck. Therefore, there was a simple injury and there is nothing in the evidence that the accused caused this injury with intention to cause death.

In the circumstances, offence against the accused/appellant under Section 324 of the I.P.C., voluntarily causing hurt by dangerous weapons or means, is established which is punishable with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Therefore, the prosecution has not been able to establish offence under Section 307 of the I.P.C. As such, the finding of the trial Court convicting the accused under Section 307 of the I.P.C. cannot be sustained and the same is liable to be set aside.

In the result, the appeal partly succeeds and the same is partly allowed. Conviction and sentences awarded to the accused/appellant under Sections 307 & 376 (2) (f) of the I.P.C. are set aside and he is acquitted of these charges. However, the accused is convicted under Section 324 of the I.P.C. and sentenced to undergo R.I. for three years. The accused is in custody since 27-5-1994, thereby he has already undergone the sentence imposed upon him. As such, the accused be set at liberty forthwith, if not required in any other case.

Parties are entitled for certified copy of this order.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

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